The NEW RULES

EXPLORING COMMUNITY, MOBILITY, SCALE AND TRADE • WINTER 2000

Local Retailers Hit the Web

Paving Our Electronic Dirt Roads

Keeping the Minors Home

Footloose and Label-Free

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The NEW RULES
EXPLORING COMMUNITY, MOBILITY, SCALE AND TRAD

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Departments

Editor in Chief
David Morris

New Rules Staff
Nicholas Hanlon, Brian Levy, Stacy Mitchell, David Morris, Elizabeth Noll, Simona Fuma Shapiro

Art Direction
Holle Brian

ILSR President
Neil Seldman

E-mail Addresses
Individual e-mail addresses for *The New Rules* staff: [first name's initial plus last name]@*ilsr.org*.

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THE NEW RULES PROJECT
Designing rules as if community matters

ILSR

The Place of Place in the 21st Century

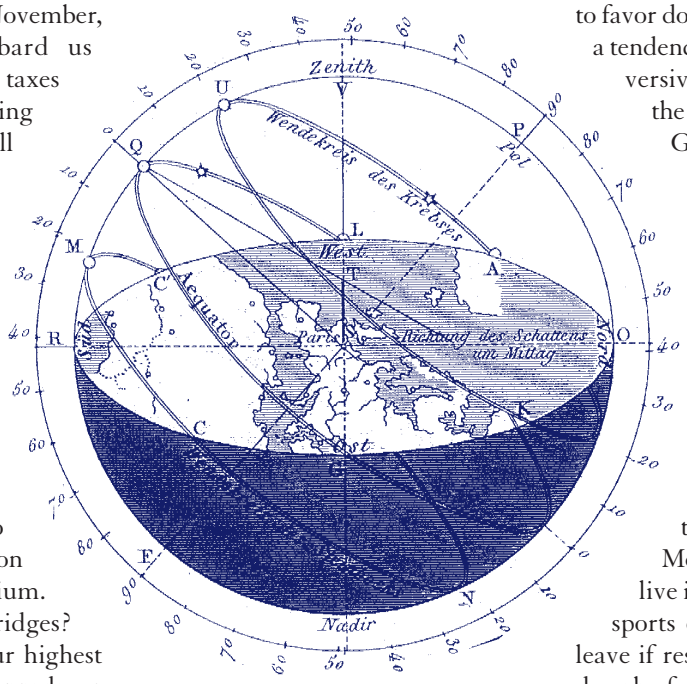
The election campaign is in full gear. From now until November, candidates will bombard us with zillions of words about taxes and deficits, military spending and health care. These are all important issues, to be sure. But no candidate or party has yet to address what may be the key issue: what is the place of place in the 21st century?

When President Clinton told us in 1997 that he wanted to "build a bridge to the 21st century" he was metaphorically telling us he was going to rely on old ideas to fashion policies for the new millennium. Do we really need more bridges? The idea that mobility is our highest good, and the distance from producer to consumer an important measure of success, is outmoded and increasingly destructive.

This journal takes issue with that single-minded focus. It discusses politics and policy from the ground up.

An information economy is inherently global in reach. But can information technologies be harnessed to strengthen geographic communities? Stacy Mitchell, author of ILSR's well-received book, *The Home Town Advantage: How to Defend Your main Street Against Chain Stores…And Why It Matters*, addresses that question in her hopeful analysis of the new .com ventures of the small business community. "Buy via the web, if you must, but buy from your local store," is their motto.

Miles Fidelman, president of the Center for Civic Networking, persuasively argues that cities must and can play a key role in designing a telecommunications system that serves the public interest. Yet Congress and the courts are increasingly stripping cities—and states—of the authority to act on behalf of their citizens in this arena.



The idea that mobility is our highest good, and the distance from producer to consumer an important measure of success, is outmoded and increasingly destructive.

Sometimes the contempt that policymakers feel for place verges on the absurd. Simona Fuma Shapiro discusses one such area: country-of-origin labeling. Free traders like Bill Clinton criticize such labeling as protectionist. After all, why on earth would someone need to know where a product was made unless they wanted to favor domestic and local producers?: a tendency viewed as downright subversive in a world governed by the World Trade Organization.

Globalization pervades all areas of the economy. Charles Dolan's Cablevision owns the New York Knicks and Rangers, as well as Madison Square Garden. Rupert Murdoch's vast communications and entertainment empire owns the Los Angeles Dodgers. Their relationship to the place their teams inhabit is tenuous. Most readers of this magazine live in cities where major league sports owners have threatened to leave if residents didn't cough up the dough for a new stadium/arena/ballpark. At the major league level the sports owners, with the acquiescence of Congress, have established rules that give communities only two choices: pay up or see their teams depart. But as Daniel Kraker notes, the minor leagues are an entirely different ball game. When minor league owners demand subsidies greater than the market value of the team, a growing number of communities are saying, "Why not own it ourselves?" Wouldn't we prefer to root for a truly rooted home team?

This is the year we debate policy. Or should. Who knows? If enough of us ask these kinds of questions, maybe our candidates will be forced to tell us where they stand on the important issue of place. What policies would they propose if community really mattered?

As always, we welcome your feedback and your support.

—*David Morris*

FCC Carves a Space for Grassroots Radio

One year after FCC Chair William Kennard introduced a tentative plan to legalize low power FM stations (see "Fighting Corporate Power with Low Power," *The New Rules*, Summer 1999), the FCC has finally authorized microradio. After the ruling Kennard proclaimed, "Today…we have thrown open the doors of opportunity to the smaller, community-oriented broadcaster."

The FCC's action could create as many as 1,000 nonprofit grassroots radio stations. The decision was likely influenced by a flood of supportive letters sent to the FCC over the past year, what Mass Media Bureau Chief Roy Stewart said was the greatest "kind of support…from ordinary people" that he has seen in his 30 years with the FCC.

Groups like the National Lawyer's Guild Committee for Democratic Communications had expressed concern that the initial rulemaking would have allowed ownership of microradio stations by large commercial broadcasters. The FCC's final decision addressed this concern by mandating that low power stations be strictly nonprofit. Stations can't sell advertising, although they can seek NPR-style underwriting.

Only stations under 100W will be permitted, easing concerns that the ruling would only make room for a handful of large stations. To make room for the new micro-stations the FCC eliminated the long-standing third adjacent channel protection, meaning that now microradio stations can operate on a frequency three channels away from an existing station.

The FCC also placed initial ownership restrictions on low power radio, allowing an ownership entity only one station for the first two years and mandating that that entity be headquartered within ten miles of the station. Those restrictions are lifted after two years, allowing for nonlocal ownership and for one entity to own up to ten stations nationwide. However, local owners are given preference if more than one group is vying for a single license within a community, and no party with ties to a media outlet—radio, newspapers, cable, etc.—can own a microradio station.

While the FCC's decision makes barely a dent in the increasingly corporatized and conglomeratized mass media market, it nonetheless reserves a space on the airwaves for media that is community-based and that truly serves the public interest.

—DK

West Virginia Uses Consumer Law to Prosecute Packers

In an effort to mitigate the struggles of small poultry farmers, states have begun searching for ways to curb the power of large poultry processors to which the farmers are contracted and to which they grow increasingly indebted. Last year West Virginia Attorney General Darrell V. McGraw challenged the state poultry industry by filing suit against Wampler foods and its parent company. Using an old law in a new way, the suit charges Wampler with "unfair methods of competition" and "deceptive acts or practices" under the state's Consumer Credit and Protection Act. The state alleges that the company forecast false earnings projections and distributed poor quality chicks to its contracted poultry growers, causing them to lose money.

Upon word of the suit, Wampler immediately petitioned to move the lawsuit to federal court, where the case would presumably come before the USDA's Grain Inspection, Packers and Stockyards Administration. The department has rarely enforced the Packers and Stockyards Act and has never ruled against large poultry processors. In late August 1999, the U.S. District Court sent the case back to West Virginia, stating "the state courts of West Virginia should first pass upon whether this unique theory of recovery is a legally viable one." Further appeals from Wampler are expected.

For more information call Judy Morrison at the National Contract Poultry Growers Association, 1-800-259-8100, or look up the website http://www.web-span.com/pga/.

—BL

San Francisco Outlaws ATM Surcharges; Federal Court Intervenes

On November 2, San Francisco voters enacted a ban on ATM surcharges by a 2-1 margin. The city became the second in the nation to outlaw the fees, following a similar ordinance adopted in Santa Monica in October. Now dozens of cities and states are considering their own legislation.

Surcharges not only gouge consumers, who spent $2.1 billion at cash machines in 1998, but they are anti-competitive and threaten small banks and credit unions. By imposing surcharges on noncustomers, the large banks that own a majority of the ATMs induce customers of smaller financial institutions to move their account to a large bank in order to avoid the fees. →

Large banks contend surcharges are necessary to cover their costs, but these banks already receive another fee on each transaction conducted by noncustomers. This fee is paid by the customer's bank to the bank that owns the ATM. The fee is determined by the network and is set at a level designed to cover the cost of the ATM and provide a profit. Surcharges are a second, and unnecessary, fee for the same transaction.

Wells Fargo and Bank of America promptly sued the city and, on November 15, a federal district court issued a temporary injunction against the bans in both San Francisco and Santa Monica. The banks contend that federal law preempts local authority over ATMs.

Attorneys for both cities believe they will ultimately prevail in court. They point to the national Electronic Funds Transfer Act, which expressly allows states to enact ATM regulations that provide greater consumer protection than afforded by federal law.

For more information on ATM surcharges, including relevant laws and court cases, legal briefs, and the latest news, visit the Finance section of the New Rules web site (www.newrules.org).

—*SM*

Boulder Considers Community Vitality Act

In November, the Boulder Independent Business Alliance (BIBA) introduced the Community Vitality Act, a set of proposals aimed at supporting locally owned businesses and protecting the unique character of the city.

The city council has already moved forward on two of the four proposals, asking the city attorney to draft them into formal legislation for a future vote. One requires that the city give preference to locally owned businesses for city purchases and contracts. The other requires that city-owned property only be leased to locally owned businesses.

The remaining two proposals are undergoing additional study. One would ban new formula businesses. The other would require that retail stores in excess of 12,000 square feet that are planned for the city's shopping mall area submit to a special review process, allowing for careful scrutiny of the store's economic and community impact.

"Absentee-owned formula shops are eager to capitalize on the prosperity of the area, but our long-term economic stability is endangered when we lose community-rooted businesses," said Jeff Milchen, director of BIBA, a two-year-old coalition of more than 150 local businesses.

Council member Spense Havlick said the proposal has generated more citizen comment than any issue during his 18 years on the council. As of December, the city had logged more than 200 emails and calls, with support for the Community Vitality Act running 20-to-1 ahead of the opposition.

—*SM*

Santa Cruz Scrutinizes Large-Scale Stores

Santa Cruz, California has mandated that new stores over 16,000 square feet undergo a review and seek a special permit. Designed to enhance the diversity of retail businesses, the ordinance requires a new store to demonstrate that it adds a new type of business; contributes to an appropriate balance of local, regional and national stores; contributes to a mix of small, medium, and large stores; and contributes to a balance of traditional and nontraditional businesses.

The ordinance states that locally owned stores "more effectively diversify the…business mix than national-based chain businesses." The law therefore presumes that local stores automatically meet the criteria, while national chains must make their case to the community.

Enacted on a 6-1 vote in late October, the law took effect in November, but will last only 90 days. The short lifespan was intended to give the city further time to study the issue.

—*SM*

Northeast Dairy Compact Survives

Proving itself a cat with nine lives, the Northeast Interstate Dairy Compact was revived by Congress in November (see "Got (Local) Milk?," *The New Rules*, Fall 1999). Despite opposition from the Midwest, the compact was granted a two-year extension. In related news, a federal appeals court upheld the compact in December, following a legal challenge from a New York trade association.

By setting a minimum price for milk above the federal pricing system, the compact has channeled over $75 million to dairy farmers in the last three years, many of whom are small independent producers. Many Midwest farmers, facing increased competition from giant corporate dairies in the West, oppose price supports for Northeast milk that could limit Midwest exports into the region. But five mid-Atlantic states want to join the compact and 14 southern states have petitioned Congress to allow them to form their own.

—*SM* [!]

Local Retailers Hit the Web

In the flurry over the runaway growth of electronic commerce, one fact is rarely addressed: e-commerce is attracting consumer dollars that used to go to local stores. Now independent businesses are collaborating to bring online profits back to Main Street. *By Stacy Mitchell*

For a time it seemed the internet might prove to be a great equalizer for small, locally owned businesses. With relatively little investment and a bit of technological know-how, these businesses could launch themselves on the web with as much sophistication and global reach as their big competitors. The national chain stores that have wreaked havoc on Main Street would find themselves at a disadvantage, weighed down by massive investments in physical infrastructure and unable to compete against smaller, more nimble rivals.

In truth, small businesses are currently a mere footnote in the battle for electronic market share. Forrester Research estimates small and mid-sized businesses account for less than 9 percent of the $20 billion consumers spent online in 1999 (up from $1 billion in 1997). Rather it is a battle between the giants of the new age—internet-only companies like Amazon.com and eToys—and the giants of the old order, like Barnes & Noble and Toys R Us.

As harmful as absentee-owned stores are to local economies, they pose an even greater threat on the web. At the very least, physical stores employ local workers and pay sales taxes to support schools and other pubic services. In cyberspace, they do neither. "The proper metaphor for e-commerce is that of colonialism," argues Andy Ross, owner of Cody's Books in Berkeley. "E-commerce exploits local markets by taking resources out of the community without returning anything in kind."

Can electronic commerce mature in a way that benefits community and values local over global? Several important developments are now underway that make localizing web commerce a very real possibility. Independent merchants in a number of sectors are pooling their resources to erect sophisticated e-commerce sites that funnel online spending to back to local businesses. Despite common perceptions to the contrary, independent businesses are finding that local presence and community roots can be assets on the world wide web. Perhaps indicative of things to come, at least one town is building its own community portal to include a town square and local shopping district.

Scale Matters

Popular myth aside, scale matters in cyberspace. While any business can construct a slick, brochure-style website, the cost of developing and staffing a fully functional electronic storefront—with a large database of items, inventory tracking, a shopping cart and secure credit card transactions—can be well over $1 million, plus substantial annual operating costs.

Stacy Mitchell is a researcher with The New Rules Project of the Institute for Local Self-Reliance, and the author of The Home Town Advantage: How to Defend Your Main Street Against Chain Stores . . . and Why It Matters.

Driving traffic to the site poses an even bigger challenge. The leading electronic retailer, Amazon.com, spent $133 million on advertising in 1998 and about twice as much in 1999. Backed by a frenzy of Wall Street speculation, web companies are spending 70 to 80 percent of total revenue on advertising. Established chains have simply added their URL to already fat marketing budgets.

Independent merchants alone are no match for this level of investment. But the trade associations, cooperatives and alliances that have helped them survive chain store expansion are now turning their attention to the web.

Do It Best, a cooperative owned by 4,400 hardware stores, launched an e-commerce site in July, beating the giants of the industry by a long shot. As of this writing, Home Depot and Lowe's offer only a few items online. DoItBest.com includes more than 70,000 items, twice as many as a "big box" store and more than four times the number found at a typical independent. The cost of developing the site was borne by the coop as a whole. To participate, stores pay $200 for the creation of their own website and $15 per month in maintenance fees.

Consumers find the site functions much like the major web retail sites, with a notable difference: their neighborhood store's name is displayed along the top of each page. The banner name is activated by linking to the site from a local dealer's website or by entering a zip code at the beginning of the visit. With the banner activated, a percentage of the sale goes to the local store. If there is no participating local store, then the sale is credited to the cooperative, which, like all coops, returns profits to its members.

Ace Hardware stores are also selling online through OurHouse.com. The cooperative owns one-quarter of the site and several private investors own the rest. Launched December 2, 1999, the site offers 22,000 items, as well as home installation and other services provided by local dealers. Participating merchants receive a commission when customers link from the store's home page or use an in-store computer kiosk. All products are supplied and shipped by the cooperative.

Independent booksellers plan to launch their own electronic commerce venture this year. Constructed by the American Booksellers Association, a trade group representing the nation's 3,500 local bookstores, BookSense.com will have a searchable database of more than 1 million titles, including many with jacket art, author biographies, reviews and other information. The site is part of a broader cooperative marketing effort under the Book Sense brand. To participate, bookstores pay a $500 set-up fee, plus a monthly fee of $200 and 4.5 percent of online sales. Orders are shipped to the customer by a book wholesaler.

About 200 bookstores are already selling online through an e-commerce network provided by BookSite.com. The company was founded by Dick Harte, owner of Rutherford's Book Shoppe in Delaware, Ohio. Harte was selling books online by early 1995. In 1996, he decided to rework the technology and make it available to other stores. The first bookseller signed on in 1997. To participate, bookstores pay a $350 start-up fee and $160 per month. Bookstores ship their own orders or pay for a drop-ship service. The database includes about 500,000 titles. Bookstores can customize the database, adding or deleting titles and adjusting prices.

A few bookstores have also developed their own e-commerce sites. For a listing of online booksellers, visit www.publink.net.

Other local retailers collaborating on the web include pharmacies and florists. Cornerdrugstore.com, an initiative of the National Community Pharmacists Association and a multimillion dollar equity fund called West Broadway Interactive, will soon allow consumers to purchase drugs locally online. FloraShops.com promises the same for flowers. A joint effort of the industry and several technology companies, FloraShops.com will be the consumer arm of Floraplex.com, an existing commerce site that links local stores with growers and distributors.

Geography Matters

Despite the rhetoric of globalization and the "death of distance" promised by the web, real-world geography matters in cyberspace.

Nearly 60 percent of online shoppers prefer to shop at businesses that have a store in their community. Part of the reason has to do with trust in the quality of the goods and the security of their credit card information. Shopping at stores with both a physical and web presence also gives the best of both worlds. Consumers can return products bought online to the store, take advantage of personal assistance and other services unavailable at internet-only companies, or →

Resources

Hundreds of bookstores, hardware stores and other independent retailers are now selling goods online. To date, however, there is no comprehensive index of locally owned stores on the web. The best way to find out if your hometown businesses are selling online—or plan to be—is to ask them.

browse at one venue and purchase at the other.

Internet companies, furthermore, are not inherently more efficient than physical stores. They do eliminate certain costs, notably store labor and overhead, but they incur higher costs elsewhere: shipping, website development, advertising and a kind of cyberspace rent: the cost of occupying well-traveled corners of the web like Yahoo. According to Mary Beth Grover, writing for *Forbes* magazine, consumers do pay less online, but the cost difference can be attributed entirely to the lack of sales taxes. This special advantage in effect subsidizes web retailers to the detriment of local stores (see "Is Tax Freedom Fair?," page 7).

A number of web retailers have also underestimated the difficulty of shipping, frustrating customers with delays and incorrect orders. Retailer-owned cooperatives already have this infrastructure in place. Ace Hardware, for instance, has been express shipping items from its warehouses to individual stores for many years. Shipping to end-users required few changes.

And while web retailers must build brand identity through high-cost advertising, established retailers can promote their website to their existing customer base through low-cost in-store promotions. There's plenty of opportunity to build a market on the web; 6 out of 10 Americans have yet to purchase anything online. Many will opt to make their first electronic purchase through a trusted local merchant.

Retailers can also leverage their web presence to increase sales at the physical store. Do It Best includes a coupon with each electronic order redeemable only at the local store.

Place Matters

Being a unique, homegrown business could prove an advantage when competing for local market share. Many small businesses make the mistake of trying to reach a global audience on the web, often obscuring their local roots in their website design. This strategy works well for hard-to-find niche products, like hand-crafted stained glass or maple syrup from Maine. But for books, CDs, hardware and other products sold everywhere, emphasizing community roots can give homegrown retailers an edge in the local market.

Although the most visited websites in a given area are national—Yahoo!, Netscape, AOL—sites that provide local content consistently rank in the top twenty. Newspapers are good example. The web has enabled people to read news from around the world, but people most often visit the site of their local newspaper. Sites that profile local events, like CitySearch or DigitalCity, are very popular, as are community networks, like Boulder's bcn.boulder.co.us or Seattle's scn.org.

If you want to know what the national bestsellers are this week, a number of websites, including Amazon.com and Barnes & Noble, will tell you. But if you want to know which books are recommended by the staff of your local bookstore, there's only one place to go. Here you might find books of regional significance featured prominently, information on community events and readings to be held at the store, essays by the store's owner on the threat e-commerce poses to the community, local news and more. Corporate retailers have a uniform national presence but they cannot match the rich community content provided by homegrown retailers.

BookSense.com and BookSite.com make the most of this competitive advantage. These ventures differ substantially from the hardware, pharmacy and florist websites in one critical respect. While hardware customers must leave their local store's home page to shop the e-commerce site, customers may order books directly from their local bookstore's website. Under both programs, the shared "back end" functions—the database, transaction mechanism, etc.—operate behind the scenes. The interface is generated entirely by the local store, allowing booksellers to capitalize on their individuality, knowledge of the local market and community roots.

Community Matters

In addition to websites that provide e-commerce capabilities to local businesses in one sector, there are sites that cater to businesses in one community. Increasingly, web retailers like Amazon.com are offering consumers one-stop shopping for a variety of goods. Virtual town squares could replicate this convenience by linking a number of local stores.

Many geographically defined sites are launched by private companies. Internet Tradeline, Inc., for example, partners with local media companies to

create sites that offer local news, information and shopping. At CapeCodOnline.com, visitors can read The Cape Cod Times, check movie listings and shop at local stores. To participate, merchants pay a $100-$200 monthly fee plus 5-8 percent of any sales generated on the site.

Cities might also build their own community-based websites. A new initiative in Evanston, Illinois is the brainchild of a broad coalition, including the local economic development corporation, the city, Northwestern University, the school districts, local businesses, nonprofit groups and the Chamber of Commerce. E-Tropolis Evanston promises to create an electronic town square with all the elements of the community present: business, government, arts, media and nonprofit organizations.

While part of the site will exist on the web, much of it will exist as a password-protected intranet available only to residents. The cost of the project will be covered by selling high-speed DSL internet service to local residents and businesses. Subscribers to the service will automatically have the e-Tropolis site appear whenever they log on. The site will thus serve as a portal to both the community and the world wide web.

Residents will be able to pay parking tickets, check their child's report card and shop at local stores. The nonprofit venture has partnered with several technology companies to build the site. Electronic storefronts will be established and operated at no up-front cost to local businesses, with a 4 percent charge on each sale. In addition, e-Tropolis Evanston will help connect low-income households and train local residents for high-tech jobs.

Perhaps the Evanston project marks a new wave of internet development, in which communities shape the web in ways that support local trade and enhance civic and cultural life. While the current trend in electronic commerce has favored remote sellers over local stores, with a potentially devastating impact on communities, the web is anything but static. It is by nature both dynamic and decentralized, factors that could ultimately make it a more effective tool for small businesses than recent history would suggest. By cooperating within sectors or with other businesses in the community, local merchants can overcome the cost and technological challenges posed by electronic commerce. Knowledge of the local market and community roots may prove to be assets on the web as well. [!]

Is Tax Freedom Fair?

Federal policy has largely exempted web retailers from collecting state and local sales taxes, giving remote businesses a 6 to 8 percent price advantage over local stores. Supporters of the subsidy argue that the internet needs nurturing, but electronic commerce has grown explosively and can hardly be defined as a struggling industry.

It is a curious policy: the government is subsidizing the growth of distant companies that contribute little to the civic, cultural or economic vitality of the communities where they do business. This growth comes at the expense of locally owned stores, which are fighting an uphill battle to remain price competitive while supporting schools, police and other public services.

The tax advantage for remote businesses arises from a 1967 Supreme Court ruling (*National Bellas Hess Inc. v. Department of Revenue of Illinois*) that concluded that states cannot compel out-of-state mail order firms to collect sales taxes. To do so would amount to an unconstitutional interference with interstate commerce. In 1992, the Court affirmed its conclusion (in *Quill v. North Dakota*), but added that Congress could enact legislation authorizing states to impose sales tax collection on remote businesses.

Congress instead moved in the opposite direction. The 1998 Internet Tax Freedom Act confirmed that web sales are to be treated like mail order sales: without a physical presence in a state, retailers are not required to collect state and local taxes. The Act imposed a three-year moratorium on any new taxes on electronic transactions and created a commission to study the issue. The Advisory Commission on Electronic Commerce is due to report to Congress in April, but the board's composition—more than one-third high-tech companies and no traditional retailers—means a recommendation in favor of sales taxes is highly unlikely.

It is not just internet-only retailers that are taking advantage of tax-free electronic sales. Although the Supreme Court has clearly stated that companies must collect taxes when they have a physical presence in a state, some chains, like Barnes & Noble and Borders Books, do not. These retailers insist their web sites and retail stores are operated by separate companies—a fact that would probably surprise most consumers, who assume they are →

Resources

To view the Supreme Court decisions, the Internet Tax Freedom Act and the proposed Consumer and Main Street Protection Act, visit the electronic commerce section of the New Rules web site at www.newrules.org.

Advisory Commission on Electronic Commerce
3401 N. Fairfax Drive
Arlington, VA 22201;
telephone: 703-993-8049;
website: www.ecommercecommission.org

e-Fairness Coalition
website: www.e-fairness.org

Multistate Tax Commission
444 N. Capitol St. NW, Ste 425
Washington, DC 20001;
telephone: 202-624-8699;
website: www.mtc.gov

Is Tax Freedom Fair? *continued from page 7*

shopping at different versions of the same operation. No state has challenged this practice as an illegal evasion of sales taxes.

Restoring a fair sales tax system presents both a logistical and a political problem. Collecting sales taxes nationwide is no small task. Retailers must comply with 7,600 separate tax jurisdictions. Each not only sets its own rate, but chooses what goods are taxable. Certain purchasers, such as nonprofit organizations, may be exempt. The rules change regularly and errors can result in audits or legal action brought by any of the 7,600 agencies.

Furthermore, while the location of a cash register transaction is easy to determine, the location of an internet transaction is another matter. If a resident of Minnesota takes a trip to Maine, and while there purchases a item online from a California-based retailer, who ships the goods from a warehouse in Illinois, four states (and perhaps four cities) could claim the right to tax the sale.

For these reasons, opponents of taxing online transactions insist local sales tax is a dinosaur ill-fit for the electronic age. But state and local governments are not so easily swayed. Not only is the sales tax their single biggest source of revenue, bringing in $189 billion in 1998, it is the only source they fully control. State income taxes, by contrast, are heavily constrained by federal income tax rules.

In November 1999, the National Governors Association announced a plan to resolve the logistical difficulties of collecting sales taxes. Known as the "third party" or "zero burden" solution, the plan has garnered endorsements from five government associations, including the U.S. Conference of Mayors and the National Conference of State Legislatures. It calls for certified third party vendors to supply retailers with software capable of matching the zip code on a customer's shipping address with the appropriate tax. The tax would be collected by the third party at the time of the transaction and remitted to the relevant governments. Retailers would be absolved of both the burden and liability of collecting taxes.

To make the system work, some simplification is required. Governments and retailers must agree on a standard set of product codes for determining whether taxes apply. Changes to tax codes could be submitted only during a certain window each year.

The zero burden plan allows for far greater flexibility in local tax policy than previous proposals. On the table little more than a year ago was a plan to equalize state sales tax rates (effectively eliminating local sales tax) and standardize product exemptions. A national sales tax has also been floated, which not only enforces a uniform rate, but makes state and local governments dependent on federal officials to return the revenue.

> The government is subsidizing the growth of distant companies that contribute little to the civic, cultural or economic vitality of the communities where they do business.

Scott Mackey, chief economist with the National Conference of State Legislatures, says the zero burden plan preserves the two key elements of state and local sovereignty over tax policy: what to tax and at what rate. "It provides a uniform system on the administrative side, but not on the policy side."

For now, the states will pursue the zero burden proposal as a voluntary pilot project. They plan to iron out the kinks while tackling the more difficult challenge of arriving at a political solution.

To make the system mandatory, the states must appeal to either the Supreme Court or Congress. If one or more states were to enact laws requiring online retailers to collect sales taxes, a subsequent lawsuit could force the Supreme Court to reconsider the issue. With the administrative burden lifted from out-of-state businesses, the states may prevail. Otherwise, Congress must enact legislation mandating tax collection nationally, or, in the case of a few states, establishing a compact similar to the Northeast Dairy Compact. (See "Got (Local) Milk?," *The New Rules*, Fall 1999).

Most federal lawmakers, however, seem bent on giving web retailers a free ride, at least temporarily. They are at odds with their constituents: a recent survey found that 65 percent of Americans favor imposing the same taxes on all sales regardless of the medium. But the position of national policymakers is hardly surprising given that it's not their revenue at stake. What's more, Silicon Valley, flush with Wall Street cash, has proved a fertile fundraising stop for both parties as they gear up for the presidential election. [!]

Resources

National Governors Association 444 N. Capitol St. Washington, DC 20001; telephone: 202-624-5300; website: www.nga.org/Internet/equality.asp

Northern California Independent Booksellers Association's Internet Tax Committee contacts: Andy Ross Cody's Books 2454 Telegraph Ave Berkeley, CA 94704; website: www.codysbooks.com/andy_words/warning.html and Bill Petrocelli Book Passage 51 Tamal Vista Blvd Corte Madera, CA 94925; website: www.bookpassage.com/battle/salestax.htm

Paving Our Electronic Dirt Roads: A Call to Action

Although the Telecommunications Act reduced local authority, there are still many steps a community can take to ensure its citizens have an accessible, affordable information infrastructure. *By Miles Fidelman*

Telecommunications infrastructure is becoming as important to our communities as streets, electric wires and waterworks. Phone jacks and video jacks are as common as electrical outlets. When these networks are down, our businesses, schools, hospitals and government agencies are paralyzed.

Our challenge now is to extend this infrastructure to the nation's smallest organizations. Currently there is a striking disparity between the typical corporate network and what is available to small businesses and residences, especially via the internet.

The typical home or small-business personal computer (PC) dials up the internet through a modem, operating at 56 kbps (56 thousand bits per second). The typical corporate PC connects through a LAN (local area network), commonly an "ethernet" operating at 10 mbps (10 million bits per second)—almost 200 times faster than a home PC. (Many businesses are upgrading to 100 mbps and even 1000 mbps.) Transferring a large file, such as a photograph, takes several minutes via modem but only a few seconds via ethernet. The impact is severe on a freelance graphic artist who must transfer many images a day, or on a doctor trying to read X-rays stored on the local hospital's computers.

It's time to pave our electronic dirt roads. Rural clinics should be linked to regional medical centers. Telecommuters, freelancers and home-based businesses should have access to high-speed networks. In today's world of deregulation and devolution, much of the responsibility for this change will fall on the shoulders of local governments. Unfortunately, telecommunications industry giants are trying to thwart local authority in one-on-one negotiations (e.g. cable franchises), in the courts, in regulatory arenas and in legislatures. In addition, a variety of Federal Communications Commission (FCC) and court rulings threaten to restrict local authority nationwide. Some states have even passed legislation narrowing local governments' options. In Massachusetts, for instance, the state administration has repeatedly attempted to preempt local authority over both antenna siting and cable franchising. In Texas, municipalities are forbidden to provide telecommunications services by state law—a prohibition that, so far, has been upheld by the FCC and in the courts. Other similar restrictions have been struck down by the courts, but the matter is far from resolved. →

Miles Fidelman is president of the nonprofit Center for Civic Networking (CCN) and directs the Center's Municipal Telecommunications Strategy Program (www.munitelecom.org). He edits the Journal of Municipal Telecommunications *and authored* Telecommunications Strategies for Local Government. *He can be reached by email at mfidelman@civicnet.org.*

Deregulation: A Change in Approach, Not Goals or Roles

Government has always been an important player in telecommunications. Government contracts gave birth to much of our communications infrastructure, from the Pony Express to early telegraph cables. The internet is a product of the Department of Defense and the National Science Foundation.

Today's telephone network—where every phone can reach every other—is largely the result of government action. Prior to 1913, thousands of independent telephone companies refused to connect with each other, and AT&T refused to connect independents to its long distance network. Antitrust investigations of AT&T ultimately led to the creation of the "Bell System," which unified the nation's telephone network as a regulated monopoly.

Now AT&T is trying to re-establish its old monopoly—this time without regulation. AT&T has already purchased TCI, formerly the nation's largest cable operator, and is in the process of acquiring MediaOne. If the acquisition proceeds, AT&T will control over 50 percent of the cable television marketplace. To date, the only challenges to this acquisition have been by local franchising authorities (notably the city of Portland, Oregon) and various public interest groups. The FCC has largely supported consolidation of the industry giant it formerly regulated.

The more recent wave of deregulation, which crested with the Telecommunications Act of 1996, did not change public policy goals, which remain to "make available, so far as possible, to all the people of the United States…a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." In fact, the act expands on this goal in the areas of affordability, availability of new technology and services, nondiscrimination and service for the disabled.

What has changed is the approach to achieving telecommunications goals. Under the Telecommunications Act, the FCC and state public utility commissions have become more referees than regulators.

If You Build It, They Will Come . . . But Will They Build It?

In Newton, Massachusetts (a high-income Boston suburb), consumers can chose cable service from two competitors (MediaOne and RCN), both of which also offer high-speed internet access and provide local telephone service in competition with the incumbent telephone company (Bell Atlantic). By contrast, residents of many rural communities must make a long-distance call, over a noisy phone line, simply to pick up email from America OnLine. Even in Newton, available "high speed" services are 100 to 1,000 times slower than services commonly available in corporate settings.

New services will take time to deploy and will be deployed unevenly. Even prosperous communities must worry about "redlining"—whether or not all parts of the community are seeing new services and what mix of services are offered by the carriers. The investment decisions carriers make today will result in infrastructure that will not be upgraded again for another 8-15 years. A well-planned system includes excess capacity, which will allow additional services to be added later at low cost. Unfortunately many systems are being built without such capacity.

The Telecommunications Act largely assumes the marketplace will provide adequate telecommunications infrastructure for local communities, but history suggests this outcome is unlikely. Telecommunications development may ultimately mirror the history of electrification: more lucrative markets will be served by investor-owned utilities, while less attractive markets will be served by a mix of municipally owned utilities and user-owned cooperatives.

Municipal Utilities Taking the Lead

Many of the country's 2000 municipal electric utilities are moving aggressively into telecommunications and the country's 900 cooperatives are likely to follow. The tiny town of Harlan, Iowa (pop. 5230), has perhaps the most advanced telecommunications infrastructure of any community in the nation. Harlan's electricity is provided by a municipal utility, which also provides gas and water. Harlan Municipal Utilities also provides cable television, residential and commercial cable modem service (at a choice of 1.54 mbps or 10 mbps). Telephone service is provided by Farmers Mutual Cooperative Telephone Company, which also provides telephone and cable TV to the surrounding county. Jointly, the two organizations operate a 155 mbps metropolitan area network serving institutional and corporate users—telecommunications services that are hard to find even in the largest of communities.

Communities with municipal electric utilities are in the best position to develop advanced telecommunications infrastructure. Entering the market is an inexpensive and low-risk step for municipal or cooperative utilities that already have a network paid for by savings on electric operations; billing systems and customer service in place; a staff to provide around-the-clock maintenance and repair; and existing customers in every home and office in town. Residents

are also served by this venture, as community-owned utilities are more likely to pay attention to all of a community's needs, not just those with the highest return on their investment.

Other Local Solutions

Even for those communities without an electric utility to build on, the local government can be a powerful force in the establishment of a telecommunications infrastructure. The Telecommunications Act reduced local authority and made it vulnerable to expensive legal challenges, but within these constraints there is a good deal local governments can do to bring the benefits of the information economy to all their citizens.

With public buildings all over town—schools, libraries, public work depots, police and fire stations and administrative buildings—local government is often the largest telecommunications user in town. Thus local government's build/buy decisions, vendor selection and negotiating strategies influence the local market.

As landlords, local governments own facilities critical to providing telecommunications services: public right-of-ways, antenna towers, water towers where antennas can be placed and public safety facilities already zoned for antenna construction.

Local governments oversee zoning and building codes. They are responsible for seeing that telecommunications construction is safe, conforms to zoning restrictions, does not detract from the community's character and causes minimal public inconvenience.

Finally, local government has the ultimate responsibility for a community's infrastructure—it paves streets, operates waterworks and transit systems and (in 2000 communities) it provides electricity.

Local governments should take advantage of opportunities to install city-owned conduit (e.g. during water pipe replacement), or to obtain conduit space as compensation for right-of-way use. With conduit in place, the cost of pulling cable becomes much lower, making it easier for carriers to enter the local market (including carriers targeting specialized users at a limited number of locations, such as medical offices).

During cable franchise negotiation, local governments are entitled to ask for an "Institutional Network" or "I-net" as part of a compensation package. An I-net is "a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers." Increasingly, communities are negotiating for "dark fiber" (fiber optic cable without associated electronics) linking government buildings and using this fiber to build a network linking public-sector sites. While I-nets are typically designed to serve only the public sector, the legal definition allows communities to use these networks for other purposes if the negotiated franchise does not include restrictive language. Aggressive negotiation for dark fiber and reserving the right to resell capacity could be an effective strategy for keeping infrastructure options open.

Maximize the Power of the Purse

Communities will benefit most when they can aggregate their purchasing power. Local government is in a position to facilitate this aggregation by combining purchases from all agencies, from public and private enterprises or/and by multiple units of local government.

As the electric industry deregulates, a number of states are granting municipalities the power to aggregate community-wide electricity purchases, and an increasing number of local governments are exercising this option. A particularly interesting model is the Cape Light Compact, a regional agreement under which multiple cities and towns on Cape Cod are purchasing power on behalf of their residents and businesses. It is only a matter of time before electric aggregation programs expand to incorporate telecommunications purchases.

A key decision for local government officials is whether they view government as a private entity and use their buying leverage only on behalf of their internal needs or whether they view government as a vehicle for maximizing the benefit to all of its citizens. When cities or counties obtain a government-only I-net as part of a cable franchise agreement, what is a good deal for government will pull significant demand out of the local market, reducing incentives for carriers to offer service. "E-rate" discounts—subsidies for school and libraries—may have the same result, because they create incentives for schools and libraries to act independently from other users, thus reducing economies of scale and bargaining power.

Minimize the Public Cost of Construction

Under the Telecommunications Act, communities can no longer deny carriers the right to build, and must treat all carriers in "competitively neutral and non-discriminatory manner." This means matters can no longer be handled on an ad-hoc, case-by-case basis. Local governments must now codify the rules applying to telecommunications construction in the form of clearly defined ordinances and regulations. Officials are well-advised to streamline procedures and to address major construction impacts. →

Resources

The Municipal Research & Services Corporation of Washington is a source of many good examples of local ordinances. http://www.mrsc.org/legal/telecomm/tcapage.htm

An example of a thorough and well put together ordinance is the City of Sacramento's Trench Cut Ordinance. Available at http://www.sacto.org/trench_cut.htm

Palo Alto, California's municipal utility is offering both "dark fiber" and is running a trial of "fiber to the home." http://www.city.palo-alto.ca.us/utilities

Information on municipal electric aggregation from Cape & Islands Self Reliance Corp can be found at http://www.reliance.org/CEF.htm.

For underground work, procedures should be designed to coordinate construction, rather than treating each street cut in a vacuum. Telecommunications work should be coordinated with other utility work and with planned road work.

Fees should at least recover all costs of managing right-of-ways and other properties. Right-of-ways constitute a valuable asset, and fees could be used to generate new revenue.

Local governments should establish clear zoning and building codes for antennas. Wireless operators prefer to save cost by building a small number of tall towers, but this approach leads to visual blight. Zoning and building codes can be designed to limit the height of towers at the cost of more numerous but less visible towers.

Codes should impose "colocation requirements": in other words, a new tower should not be allowed unless an applicant can demonstrate that its antennas can't be placed on an existing tower. New towers should be required to include space for colocation of additional antennas.

Many local governments own antennas towers that support police and fire radios. Leasing tower space can avoid proliferation of new towers and generate revenue and in-kind services (e.g. cell service provided in lieu of or in addition to lease fees). Water towers are another good location for antennas. A carefully written zoning code can encourage carriers to place their antennas on publicly owned towers or land.

Resources

Other useful websites are the American Public Power Association, at http://www.appanet.org, and the National Association of Telecommunications Officers and Advisors, at http://www.natoa.org.

The Consumer Federation of America report on concentration of ownership can be found at http://www.consumerfed.org/broadbandaccess.pdf.

Information on the Portland, Oregon transfer challenge is at http://www.mhcrc.org/CurrentIssues/atttci_transfer.htm.

Exercise Franchise Authority

A community's careful use of franchising powers can encourage market entry by additional carriers.

Cable systems typically operate under a franchise from local government, with requirements and procedures set by a mix of federal, state and local law. A franchise usually grants use of the community's right-of-ways in return for a franchise fee and in-kind services (e.g. a public access studio and channel), and imposes conditions regarding services, customer service and system performance.

In the past, communities typically had a single franchisee and (re)negotiated the franchise every 10-15 years. Previous franchises were negotiated as special cases and enacted as local ordinances. In the deregulated environment, communities must open their right-of-ways to all applicants and must apply a uniform set of rules.

Each local government should enact a "cable ordinance" stating the rules for applying for a franchise or franchise renewal.

Typical franchises grant broad rights to build in right-of-ways, often without requiring building permits. To better manage construction impacts, new franchises and cable ordinances should subject cable operators to a full set of permitting requirements for all construction activities.

A large number of cable systems have been changing ownership recently—a step that requires approval by the local franchising authority (local government). This gives communities the opportunity to impose conditions for approval. Portland and Multnomah County, Oregon, for example, attached a "non-discriminatory, open access" requirement to the offering of high-speed internet services via cable television planned by AT&T and TCI. Such a requirement, which has recently been upheld by a lower court, would allow customers to connect directly via cable to their choice of internet service providers (as internet subscribers do now via telephone lines) instead of being required to go through AT&T's affiliate "@Home" (paying the full @Home retail price), and paying again to reach their provider of choice.

Local governments should also consider enacting a "telecommunications" ordinance, specifying rules for carriers providing telephone and data communications services.

A Call to Action

Chances are, telecommunications issues are already on your community's agenda in the form of franchise renewals, applications to transfer ownership of cable systems, applications for new franchises, applications to lease right-of-ways, applications to build wireless towers or other requests. It is time for local governments to update ordinances, negotiate franchises, implement purchase aggregation programs, and possibly develop government-owned infrastructure. A small community might want to assign a full-time telecommunications officer or form a high-level task force, as well as band together with other municipalities to fight industry efforts to preempt local authority.

A hundred years ago, lack of a rail stop condemned many towns to a lingering death. Today, electronic "streets" are needed to link our communities to the information superhighway. Local government's action or inaction will determine which communities win and lose. Decisions you make today will haunt your community for decades to come. [!]

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Keeping the Minors Home

Home teams are pulled up by their roots as owners cash in on stadium deals: it happened to the majors and now it's happening to minor league sports teams. Buying the team is one way to keep them at hometown's home plate.

By Daniel Kraker

In 1999 Thunder Bay, Ontario lost its Whiskey Jacks to Schaumburg, Illinois. The AAA Vancouver Canadians became Sacramento's River Cats, and next year Lakewood, New Jersey will be home turf for the Cape Fear Crocs, currently from Fayetteville, North Carolina.

These moves hardly made a ripple in sports headlines: possibly the only people who cared were those who woke up without a ball team. Partly that's because the minors don't get a lot of press anyway, and partly it's because sell-out sports owners are nothing new.

The bait for all three moves was the same: a pricey new stadium. Schaumburg's spending $12 million, Lakewood $20 million, and Sacramento $43 million to lure the teams away from their hometowns.

As minor league baseball explodes in popularity, it's beginning to suffer from the same stadium blackmail that has plagued major league towns. Sixty minor league teams have uprooted themselves from cities across the country in the last decade. Other teams have been coaxed into staying only when local governments paid for new stadiums that often cost several times more than the team itself was worth. More than 80 minor league stadiums have been built in the last decade.

The minor leagues do not have the talent of the majors, but in every other way the differences between minor league and major league teams are shrinking every year. Consider attendance, once disproportionately favoring the major leagues. About 70 million fans attend major league baseball games annually. In 1999 more than 39 million people attended minor league baseball games—almost double the attendance of ten years earlier. If this trend continues, by 2010 more people may be attending minor league games than major league games.

To house these newfound fans, minor league stadiums are getting bigger. Meanwhile, major league parks are getting smaller. The minor league Buffalo Bisons' ballpark, for example, where attendance eclipsed one million six years running in the late '80s and early '90s, holds more than 20,000 people. By contrast, the major league Cleveland Indians play in a new park that holds only 43,000, down from their old stadium's capacity of 80,000.

The increased popularity of the minor leagues has led owners to pressure local governments to do whatever it takes to ensure that the club is not lured away by a teamless community vying for a baseball franchise of its own. But why bribe a team owner with a publicly financed new stadium that costs more than the team itself is worth, simply to guarantee that the team will stick around for another ten or twenty years?

There is a way out of this quandary: it's called community ownership. Communities shouldn't bribe their teams to stay—they should buy them.

Minor Obstacles, Many Models

The idea of community ownership has received a respectful hearing in the *Washington Post, USA Today* and the *New York Times*, but the roadblocks set up by the big leagues make public ownership unlikely. Among the obstacles are the astronomical cost of teams, the owner-initiated prohibition of public ownership and the ability of all leagues to restrict the number of franchises. →

Daniel Kraker is a freelance writer who contributes regularly to The New Rules.

The National Football League formally prohibits community ownership; Major League Baseball does so informally. Congress would have to intervene to eliminate these legal impediments: an unlikely event. (The Green Bay Packers are the only community-owned team in major league pro sports: their ownership structure was grandfathered into the league in 1961. To view the NFL's bylaw prohibiting community ownership, see the New Rules website at www.newrules.org).

In the minor leagues, however, the obstacles are modest.

Public ownership of minor league teams is not prohibited, even when the team is a farm team of a major league ball club. As a result, more than a dozen minor league teams are owned by a county, a city, local citizen-shareholders or, in two cases, by a local nonprofit foundation.

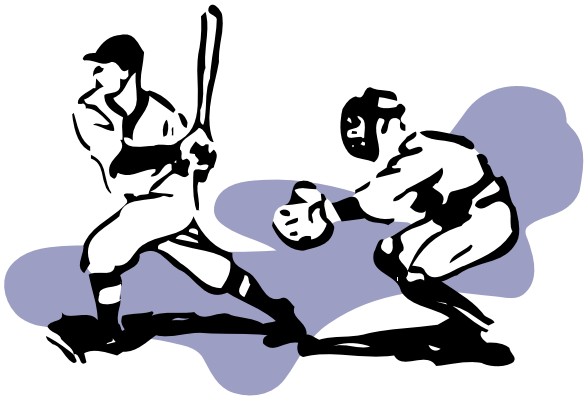
- **Local government ownership.** The AAA Toledo Mud Hens (famed favorite team of Corporal Klinger of *M*A*S*H*) are owned by Lucas County. The Harrisburg Senators are owned by Harrisburg, Pennsylvania, which paid $6.5 million in 1995 to acquire the AA Senators, who were planning to move to a new taxpayer-financed ballpark in Massachusetts. It was a steep price to pay, as the private owners had bought the team only six months earlier for just $4.1 million, but the team was popular and the city had made the stadium the center of a redevelopment initiative.
- **Direct fan ownership.** Two fan-owned teams play in upstate New York: the AAA Rochester Red Barons and Syracuse SkyChiefs. Both teams sold stock to the community in the late 1950s when their major league affiliates reduced their amount of financial support. The Red Wings are owned by 8,000 shareholders, most of whom own fewer than five shares. The team is technically a for-profit corporation, but the club has never paid a dividend and will not do so for at least another 20 years as part of its lease agreement with Monroe County for its 10,600 seat stadium. The SkyChiefs have less than 4,000 shareholders and have turned a profit every year since 1970.
- **Nonprofit enterprises.** The Memphis Redbirds are the only professional team recognized by the IRS as a nonprofit, tax-exempt, charitable organization. Owner Dean Jernigan spent $8 million in 1997 to bring the AAA Redbirds to town and then promptly turned ownership over to a foundation made up of 17 civic and business leaders, and agreed not to take a salary. "If the main identity of a city is tied to a sports team, who are we going to entrust this to?" asks Jernigan. "Who can be responsible? It's not an individual, I assure you."

Resources

Two reports on community ownership are available from ILSR: "Don't Bribe 'Em. Buy 'Em: A strategic proposal on how New Yorkers can create—and control—a minor baseball league of their own" and "Roots, Roots, Roots for the Home Team: Community-Owned Professional Sports." See our website, www.newrules.org, to order the reports and to view legislation on this issue, especially The Give Fans a Chance Act.

The Minnesota Legislature maintains a website on financing pro sports facilities: www.leg.state.mn.us/lrl/issues/sports.htm

"The Green Bay Packers: America's Only Not-for-Profit, Major-League Sports Franchise," a policy report published by the Wisconsin Policy Research Institute, 11516 N. Port Washington Rd. #103, Mequon, Wisconsin 53092; telephone: 262-241-0514.



The foundation's bylaws explicitly try to distance the team from baseball's "old boys" ownership stigma by requiring half of the directors be women and that the Board's ethnic backgrounds reflect the composition of the Memphis area. The team funnels all profits back into the community. Community involvement, through structured youth programs such as "Returning Baseball to the Inner City" (RBI) and "Stripes," which funds sports programs in the public schools, is an integral part of the team's activities. About 350 children participated in the RBI program this past year, and Stripes reached about 1,000 youth, in the process reviving baseball in eight neighborhoods and in 30 middle and junior high schools.

The single A Wisconsin Timber Rattlers are also nonprofit, but they raised capital in a more "capitalist" way—by selling nontradable stock to local investors.

The Minors are a Bargain

Big league teams cost a lot. The Washington Redskins of the NFL recently sold for $800 million. The Cleveland Indians were sold in November 1999 for $320 million, the most ever paid for a professional baseball team. No community could, or should, come up with that kind of money in the face of more pressing public policy concerns.

Compared to the majors, minor league ball clubs are dirt cheap. Minor league franchises range from about $2.5 million for a class A team to around $10 million for a AAA club—a bargain next to the price tag for major league teams: anywhere from $100 million to $650 million.

Minors Can Expand

There are few major league teams and the leagues rarely expand. Twenty-four states do not play host to any professional sports team, in any league.

Minor league clubs, however, are plentiful. Numbering well over 200, they can be found in every state, and continue to pop up in new markets as owners discover that if they can attract 3,000 to 6,000 people to games, they can probably generate a profit.

Between the 1996 and 1997 seasons overall gross revenues of minor league teams climbed five percent—mainly because of increasing attendance.

Leagues affiliated with major league baseball can only expand when the majors do, but there can be as many independent teams as there are communities willing to host them. The re-emergence of independent leagues has changed the supply-demand equation for minor league baseball. Unaffiliated leagues date back to 1906, but were extinct for decades before enjoying a revival in the early 1990s, beginning with the rebirth of the Northern League in 1993. The league initially fielded eight teams in the Upper Midwest and Canada, but in late 1998 merged with the independent Northeast League. The new Northern League boasts 16 teams that drew a total of more than 2 million fans for the 1999 season.

Officials in the established minor leagues initially scoffed at the independent leagues, claiming their rosters were filled with has-beens. Now big league clubs consistently scout the independent leagues for new talent. Since 1993 the Northern League has sold 175 contracts to Major League; currently 58 former Northern Leaguers play on big league clubs or their farm teams. The Northern League, which as an independent league receives no funding from major league clubs, saw 12 of its 16 clubs report profits in 1999.

Independent teams are more fan-friendly because their viability depends on it. According to Miles Wolff, Northern League founder, this is not the case with affiliated minor league teams. "The purpose of farm-system baseball is not to win; it's to develop players. Independent clubs are tailored to the city."

Fans seem to agree. The Northern League has been joined in the 1990s by the Western League, Atlantic League, Texas-Louisiana League and the Frontier League, which at ten franchises is the next largest independent league. Its attendance topped 700,000 in 1999, and like the Northern League it has succeeded in sending a number of its players on to the Majors—117 since its inception in 1994. The Frontier League, Atlantic League and Western League all plan to expand for the 2000 season. Thus in less than 10 years these independent leagues will have added more than 50 new minor league franchises.

Community ownership has been an undeniable success, but it remains at the fringes of public discourse. It would take a city like New York to change the nature of the debate.

New York, New York

New York City has made a significant investment in minor league baseball, but it is alienating host neighborhoods and driving costs up through shortsighted planning. It wants to build stadiums in Staten Island and Brooklyn for minor league teams owned by the Yankees and the Mets. Mayor Rudolph Giuliani wants to build a temporary stadium at the Parade Grounds in Brooklyn to house Brooklyn's team until the stadium on Coney Island is finished. As of the end of 1999 the price tag for all three had reached nearly $120 million.

All three ballparks, however, have run into considerable opposition. In Brooklyn the temporary park at the Parade Grounds has been held up by lawsuits filed by ACORN and Brooklyn Borough President Howard Golden and in late January the Mayor announced that he was switching his efforts for the temporary site to Queens. Meanwhile the Coney Island's community board has voted overwhelmingly to oppose the ballpark there. The city council finally approved the record-breaking $71 million price tag for the Staten Island Yankees permanent stadium, but only after a bruising debate.

Many are angry that the city is willing to spend enormous sums to attract short season class A teams, who play only a 38-game season (half of what higher caliber teams play), and are only one rung up from the bottom of the minor league organizational ladder.

For about one-third of the $120 million the city is currently planning to spend, it could create an independent league of eight community-owned teams and still have money left over to build or refurbish modest ballparks, in locations agreed on by the surrounding communities. New York could choose from the array of ownership models currently existing or create new ones.

The cross-town rivalries of the Giants and the Dodgers and the Yankees are the stuff of legends. New Yorkers now have an opportunity to recreate these classic rivalries. The city is large enough to support dozens of minor league clubs—and clearly there is a demand. The Brooklyn Bombers vs. the State Island Sliders, anyone?

A fan-owned New York City league would do much more than bring back professional baseball to the neighborhoods of the city. It would demonstrate to the nation that communities do not have to steal one another's teams to bring professional sports to town and root them there for generations to come. [!]

Resources

Pro sports stadium wars have inspired several books: Field of Schemes: How the Great Stadium Swindle Turns Public Money into Private Profit, *by Joanna Cagan and Neil deMause (also see their website, www.fieldofschemes.com, which has weekly news updates and resources);* Major League Losers: The Real Cost of Sports and Who's Paying for It, *by Mark S. Rosentraub; and* Home Team: Professional Sports and the American Metropolis, *by Michael N. Danielson.* Wild and Outside: How a Renegade Minor League Revived the Spirit of Baseball in America's Heartland, *by Stefan Fatsis, is about the revival of The Northern League. See also "The Green Bay Packer Model: Community-Owned Teams," a chapter in* Cooperation Works! *by E.G. Nadeau and David J. Thompson.*

This Isn't Your Father's Free Trade

It wasn't tariffs that brought 50,000 protestors to Seattle's streets in November. It was concern over issues like living standards, social justice, environmental protection and political freedom. Free trade, as administered by the WTO, is no longer about how much tax to slap on an import. *By David Morris*

"Perfection of means and confusion of ends seems to characterize our age." That insight of Albert Einstein's half a century ago aptly describes the current debate, or more precisely, non-debate, about free trade.

Free trade—a means—is now viewed as an end. Indeed, it has taken on the trappings of a full-fledged religion: it is less an economic strategy than a moral dogma.

This explains why most commentators disparaged the 50,000 protestors who effectively shut down the recent World Trade Organization talks in Seattle. Most pundits saw the protestors as antitrade. But the current debate about free trade is less about trade than about the nature of sovereignty, the role of community and the reach of citizenship: a very different discussion than pre-1980s trade talks.

From Free Trade to the End of Citizenship

From 1848 (the year Britain adopted a free trade policy) to 1980, free traders conceded the right of countries to manage their own affairs. That included defending small businesses and family farms, enacting stringent environmental standards, banning foreign ownership of key resources, and requiring outside investors to meet the needs of their host communities. The free trade debate was about tariffs and was largely unconnected to domestic debates about minimum wages, maximum hours, environmental and health protection and social justice.

After 1980, the term "free trade" began to acquire a much more expansive meaning and the boundary lines between domestic and foreign blurred. Free traders talked of doing away with "non tariff trade barriers." These were any ordinance, regulation or tax that inhibited the movement of goods and services across borders.

This new way of thinking guided the U.S. Canadian Free Trade Agreement (1988), the North American Free Trade Agreement (1994), and the changes in the General Agreement on Tariffs and Trade (GATT) that led to the creation of the World Trade Organization (WTO) in 1996.

The rules have changed.

The New Rules of Trade

In an earlier time, countries were allowed to impose the same standards on importers as they did on domestic producers. That is no longer true.

In 1980, to their horror, Europeans discovered that 2- and 3-year-old children were reaching puberty. They traced the problem to growth hormones used to promote weight gain in cattle. Consumers in West Germany, Italy, the Netherlands and Belgium persuaded their governments to ban hormone additives. In 1988 the European Union imposed a Europe-wide ban on European producers. In 1989 the ban was extended to importers.

In 1998 the WTO ruled that Europe had no right to impose such rules on imported beef. Under the new trade rules, countries were no longer allowed to implement health and safety standards that err on the side of caution, even when in response to impressive citizen demand.

In an earlier era countries had the right to take into account the way a good was made or the regime that made it when regulating imports. This is true no longer.

The WTO specifically prohibits any government from discriminating against a product on the basis of how it is made. A shirt is a shirt is a shirt, whether it

David Morris, vice president of the Institute for Local Self-Reliance and director of The New Rules Project of ILSR, did twice daily commentaries in Seattle during the November 1999 Ministerial Meeting. The commentaries are available at www.ilsr.org.

is made from genetically engineered cotton or by prison labor. To date, no environmental, social, health or food safety law that has been challenged at the WTO has survived the attack.

Some 20 years ago, appalled by the brutal apartheid system in South Africa, citizens pressured half a dozen states and more than two dozen cities to adopt purchasing and investment policies that prohibited them from doing business with corporations that did business in South Africa. After he was freed, Nelson Mandela acknowledged the value of these efforts in accelerating the demise of apartheid.

In 1996, Massachusetts adopted a similar bill to one it adopted a decade before regarding South Africa, but this time aimed at the narco-military regime in Burma (now called Myanmar). A dozen cities followed suit. But under the WTO, Massachusetts will no longer have the right to enact such policies.

Earlier free trade agreements focused on manufacturing. Today they are slowly extending into all parts of societies. Indeed, the debate in Seattle was largely about whether and how to extend the GATT into services like education and health and finance.

Originally GATT operated without an enforcement structure. The WTO, on the other hand, according to trade lawyer Lori Wallach of Public Citizen's Global Trade Watch, "has the strongest enforcement procedures of any international agreement now in force." World traders now have a cop on the beat.

The WTO is beginning to look like a new world government. Indeed, the U.S. has argued that when the WTO rules against a country, that country must amend its domestic laws.

But this is different from any kind of government democratic societies are familiar with. First of all, it operates in secret. The judges that sit on the WTO panels are appointed. They meet behind closed doors. They hear no outside witnesses. Their proceedings are not made public.

Second, WTO judges are not chosen because of their expertise in the subject they are ruling on, but for their adherence to the tenets of free trade. A few weeks before the Seattle meeting, a federal judge in that city ruled that President Clinton was violating U.S. laws by refusing to allow noncorporate representatives to sit on the U.S. Trade Office's advisory panels.

Third, only governments (and in the case of NAFTA, corporations) can bring a case to the trade panels. Citizen organizations and individuals and local governments cannot.

Fourth, this government can only overturn laws. It cannot enact them. Thus, for example, when the Canadian government banned the use of a manganese-based additive in gasoline, the U.S. Ethyl Corporation sued under NAFTA. The trade panel ruled that Canada lacked a compelling scientific basis for the law. Thus Ethyl would be owed considerable compensation for lost potential profits if Canada went ahead. Canada backed down. But if citizens of Canada or the U.S. compiled overwhelming evidence that manganese additives should be removed from gasoline and their governments refused to act, they could not go to a trade panel to ask that such a ban be enacted.

> In an earlier time, countries were allowed to impose the same standards on importers as they did on domestic producers. That is no longer true.

Fifth, the WTO allows nations to enact laws that are weaker than a global standard but not stronger. This is the opposite of how many U.S. federal laws operate. For example, there is a federal minimum wage which acts as a floor, not a ceiling. Individual states can set their own minimum wages higher. Many environmental laws operate in the same fashion.

Sixth, the new planetary constitution includes no Bill of Rights. The U.S. Constitution could not have been ratified without such a section, which includes in the First Amendment the right to petition government for redress of grievances.

Seventh, the WTO offers no democratic process for change. It can be amended, but only from within.

Revisiting the Empirical Evidence

In Seattle, a petition signed by more than 1,200 nongovernmental organizations in 85 countries was presented to the WTO, asking that it declare a moratorium on further actions and initiate a period of reflection and evaluation.

We need to reconsider the value of the new free trade rules. Economist Paul Krugman says it's "a hypothesis, not a truism" that a country's economic fortunes are largely determined by its success on world markets. "And as a practical empirical matter," he declares, "the hypothesis is flat wrong." National living standards are overwhelmingly determined by domestic factors.

continued on page 21…

Footloose and Label-Free

Labeling laws allow vendors to sell apples without telling consumers whether they're from Washington or Australia, making it hard for those who prefer to buy local, regional or even national produce. Congress is looking at several bills that would require stricter labeling of produce and meat. *By Simona Fuma Shapiro*

According to a 1969 U.S. Defense Department report, an average food item in America traveled 1300 miles from origin to plate. Thirty years later, that average item travels an estimated 2000 miles. Hamburgers often consist of cattle remains from several countries, ground together and stamped with a USDA label. Fresh produce originates in countries as far-flung as Chile, Holland and New Zealand. This increasingly global scale of food production and distribution is raising concerns among American farmers and consumers about the safety of imported food and the future of local farmers.

These concerns have led to the introduction of country-of-origin labeling bills in Congress and at the state level for meat and produce.

Country-of-origin labeling has been mandated by law for 70 years. Section 304 of the Tariff Act of 1930 requires that every imported item be conspicuously and indelibly marked in English to indicate its country of origin to the "ultimate purchaser." But the law contains numerous loopholes and exceptions.

Clothing, appliances and canned and frozen goods are all labeled. But a product with many parts manufactured in more than one country need only be marked with the country of its last "substantial transformation." In 1994 Congress closed this loophole for automobiles by passing the American Automobile Labeling Act, following a lobbying campaign by American autoworkers. The law requires that each automobile for sale in the U.S. bear a label disclosing where the car was assembled, the percentage of equipment that originated in the U.S. and Canada, and the country of origin of the engine and transmission.

Other exceptions to the Tariff Act remain, including an exemption for loose natural products such as fruits and vegetables and foreign meat that is packaged in the U.S.

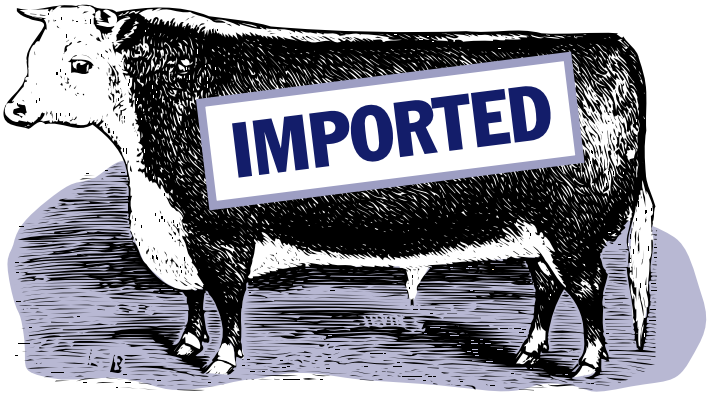
Simona Fuma Shapiro is a researcher with The New Rules Project of the Institute for Local Self-Reliance.

In 1997 farm prices and incomes began to fall in many sectors. Part of the drop was due to imports, which have grown in recent years with expanding trade agreements. The U.S. imports about 16 billion pounds of fresh produce a year, an all-time peak made easier by the passage of NAFTA. Large meatpackers rely on imports from Canada to keep livestock prices low in times of high demand.

Several bills introduced in Congress this year would require country-of-origin labeling of meats and produce. While the main lobbyists behind these bills have been ranchers and growers, their sponsors cite consumer preference as an important motivating factor. Surveys sponsored by the produce industry between 1990 and 1998 show that between 74 and 84 percent of American consumers favor mandatory country-of-origin labeling for fresh fruits and vegetables at the retail level. Most are even willing to pay a little more for American-grown produce.[1]

But the concern over foreign meat and produce goes beyond patriotism. Seventy percent of survey respondents believe that U.S. produce is safer than imported produce. The FDA reports that the last decade has seen a significant increase in the incidence of foodborne illness from fruits and vegetables. Several well-publicized outbreaks involved foreign produce. In March 1996 consumers in California and 19 other states suffered severe diarrhea, vomiting and muscle aches attributed to *cyclospora*-infested raspberries from Guatemala. In March 1997 over 200 Michigan schoolchildren contracted hepatitis A as a result of eating Mexican-grown frozen strawberries that had been purchased for the school lunch program. There is also concern over the safety of some European beef due to an outbreak (mainly in Great Britain) of bovine spongiform encephalopathy, or "mad cow disease." Although imported food is subject to U.S. food safety standards both at the border and overseas, there is a widespread perception that these are not enforced.

According to a report issued by the U.S. Center for Disease Control and Prevention, the nature of foodborne diseases is changing. Thirty years ago an outbreak would follow a church supper, family picnic or wedding reception: it would be an acute and highly local outbreak, typically traced to a food-handling error in a small kitchen that occurred shortly before consumption.



Today diffuse and widespread outbreaks, involving many counties, states and even nations, are more frequent. These follow a different pattern—the low-level contamination of a widely distributed commercial product. New pathogens, too, are implicated. *Salmonella* has increased steadily since World War II, as have *E. coli* and *Cyclospora cayetanensis*. These pathogens can be attributed to "changes in the way food is produced and distributed," according to the CDC report.[2] It is no surprise that in this climate consumers are clamoring for more information about their food, including country-of-origin labels.

Meat labeling bills

The USDA is responsible for ensuring the safety and proper labeling of all meat and poultry products, including imports, under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Regulations issued under these laws require that the country of origin appear in English on all individual, retail-ready packages of imported meat products (i.e. canned ham). Imported bulk products such as carcasses, carcass parts, or large containers of meat and poultry parts that will be further processed in the U.S. must also be marked with their country of origin.

But once these nonretail items enter the country, the laws consider them domestic products. When they are further processed in a USDA-inspected meat plant, neither the new product nor its container requires labeling. Even minimal processing, such as cutting a larger piece of meat into smaller pieces, is considered enough of a transformation to no longer require country of origin markings. If a U.S. factory grinds foreign beef into hamburger or mixes it with a domestic product in a soup or stew, neither the factory nor the retailer is required to indicate that the final product contains foreign meat.

Four states require meat retailers to clearly label imported meat with the country of origin: Kansas, North Dakota, South Dakota and Wyoming. The Wyoming law was passed most recently, in July 1999, as state lawmakers grew impatient with federal progress on the issue.

Several bills introduced in 1999 would require country-of-origin labeling for meat products. The Imported Meat Labeling Act of 1999 (H.R. 222), introduced by Representative Helen Chenoweth (R-ID), would require both imported and U.S.-prepared food products that contain foreign meat to identify the country where the animal was raised before slaughter. A similar but more prescriptive bill, the Country of Origin Meat Labeling Act of 1999 (H.R. 1144), was introduced by Representative Chenoweth two months later.

The Meat Labeling Act of 1999 (S. 242) by Senator Tim Johnson (D-SD), and the Agricultural Safety Net and Market Competitiveness Act of 1999 (S. 19) by Senator Daschle (D-SD) would cover muscle cuts, ground and/or processed products from beef, lamb and pork. The Daschle bill, along with S. 241 by Senator Johnson, and H.R. 1698 by Representative Rick Hill (R-MT), would not permit imported products to carry a USDA quality grade seal. A bill by Senator Conrad Burns (R-MT) covers beef and lamb but not pork. It also authorizes the USDA to permit firms to affix an all-U.S. label to ground beef that is made entirely from domestic beef.

Produce labeling

U.S. Customs Service rulings provide that when the fresh produce is taken out of its container and put into an open bin or display rack, there is no obligation to identify the items by the country of origin. (If they were wrapped in cellophane or otherwise packaged they would require a label.)

Three states—Florida, Maine and Texas—have enacted country-of-origin labeling laws for fresh produce. Florida requires all imported fresh produce to be labeled with country of origin. Maine requires country of origin labeling for fresh produce at the retail level when it has been imported from countries identified as having specific pesticide violations. Texas requires country of origin labeling for fresh grape- →

Resources

For more on the policy issues surrounding country-of-origin labeling of meats and produce, see "Fresh Produce: Potential Consequences of Country of Origin Labeling," a report published in April 1999 by the General Accounting Office (GAO/RCED-99-112).

Congressional Research Service reports on country-of-origin labeling can be obtained at www.cnie.org/nle/crsag.html

fruit. According to the U.S. General Accounting Office, enforcement is carried out only in Florida, where inspectors check shipping boxes against display signs during semi-annual state health inspections.

Representative Mary Bono's (R-CA) Produce Consumers' Right-to-Know Act (H.R. 1145) would require retailers (except for food service establishments) to inform consumers of the country of origin of all domestic and imported fresh fruits and vegetables, including loose items. Senator Graham (D-FL) is sponsoring the Imported Produce Labeling Act of 1999 (S. 860) requiring country-of-origin labeling of all imported produce.

The National Uniform Food Safety Labeling Act (H.R. 1346), introduced by Rep. Frank Pallone (D-NJ), would require country-of-origin labeling of domestic and imported fresh fruits and vegetables as well as products derived thereof, such as juice, frozen juice concentrate, fruit butter, preserves and jams, or canned or frozen fruits and vegetables.

Peanuts

A bill to require country-of-origin labeling of peanuts (H.R. 3263) has been introduced by Sanford Bishop (D-GA) and Terry Everett (R-AL), Congressmen from heavy peanut-producing districts. Peanuts have been supported by a federal program that limits the amount of peanuts eligible farms can sell for domestic use, guaranteeing a high price within this quota. Nevertheless, farmers have seen a 25 percent decline in cash receipts for their crop since 1992. Part of the drop is due to competition from imports. According to a Congressional Research Service report, imports in the 1997/1998 marketing year accounted for 7 percent of domestic food use, compared to negligible amounts prior to 1993/1994.

Opponents

Opponents of country-of-origin labeling fall into three categories—importers, retailers and free trade advocates. Importers view the bills as protectionist trade barriers intended to increase costs for importers and spread the perception that foreign products are not as safe. They note that several serious outbreaks of illness have been linked to U.S.-produced agricultural commodities.

Retailers argue that both industry compliance and government oversight costs would be extremely high. The average produce department carries more than 200 continuously changing items annually. Changing store signs to ensure that produce is properly labeled would cost about two staff hours per week, according to a grocery retailers association. The FDA has estimated that monitoring for produce would cost $56 million annually and has said that enforcement would be difficult.

Clinton administration officials have expressed reservations about bills that single out imports because GATT trade rules require that imported and domestic products be treated alike. They also fear that other countries could retaliate by requiring labels on more U.S. products.

Proponents

Proponents of the bills include ranchers associations as well as fruit and vegetable growers associations.[3] They argue that consumers have the right to know where their food comes from, and they counter the industry's claim regarding the high cost of labeling by pointing to the experience of Florida, the nation's fourth largest state, which has had a country-of-origin labeling law for produce since 1979. The Florida Department of Agriculture estimates the annual cost of the law to be less than $250,000 for the entire industry. In addition, the Publix and Winn Dixie supermarket chains have estimated that compliance with the Florida law costs individual groceries less than $10 per month. Compliance can be achieved simply by placing signs near produce bins or displaying the items in their shipping cartons.

Proponents also allege that it is unfair to exempt fruits, vegetables and meats from some country-of-origin labeling requirements when almost all other imported consumer products must have them.

Proponents argue that labeling laws do not violate GATT and NAFTA, which simply require that labeling not seriously damage a product, nor reduce its value materially nor increase its cost unreasonably. As for worries that trading partners would see country-of-origin labeling as adversely affecting their exports by raising costs, proponents note that of the 28 countries that account for most of the U.S. trade in produce, 13 have their own country-of-origin labeling requirements for loose produce at the retail level. These include Japan, Australia, Canada and the EU.

Labeling and the Shortening of Food Lines

Most consumers in industrial societies have only a remote sense of where their food comes from. There is evidence that when given a choice, consumers seek to re-localize their food supply. In Europe, where food scares dominate the headlines almost monthly, recent voluntary country-of-origin labeling for beef has served to "renationalize food markets within the single European market," according to Gabriel Binetti, head of agricultural products for the French retail chain Carrefour.

Country-of-origin labeling could be a first step towards a more localized agricultural economy. Perhaps the principle behind country-of-origin labeling should even be extended to state-of-origin labeling. This belief has been supported by some of the world's largest retailers. "To most customers, it's not an issue whether produce was grown out of the country, it's whether it's grown in the county or state," says Bruce Peterson, vice president of produce merchandising for Wal-Mart. "If I am selling Georgia peaches in Georgia, I want customers to know that. The perception is that locally grown produce is fresher."

Perhaps shoppers do believe local produce is fresher. Perhaps consumers feel safer when their food comes from small farms rather than feedlots, local dairies rather than industrial plants, and farmers' markets rather than supermarkets. Perhaps the push towards country-of-origin labeling reflects a desire to support struggling U.S. farmers. Whatever the reason, it seems fair to consumers (and beneficial to farmers) to distinguish between oranges grown in Florida and those flown into Florida from Chile.

However, when asked to rate the importance of several types of labeling information, households reported information on freshness as the most important, followed by information on nutrition, storage and handling, and preparation tips. Information on country of origin was ranked fifth. [!]

Notes

1. However, when asked to rate the importance of several types of labeling information, households reported information on freshness as the most important, followed by information on nutrition, storage and handling, and preparation tips. Information on country of origin was ranked fifth.

2. F. K. Kaferstein, Y. Motarjemi and D. W. Bettcher, "Foodborne Disease Control: A Transnational Challenge," *Emerging Infectious Diseases*, Vol. 3, No. 4, a publication of the National Centers for Disease Control and Prevention in Atlanta, GA.

3. Groups backing Congresswoman Bono's bill include the Western Growers Association, Florida Fruit and Vegetable Association, California Citrus Mutual, the National Peach Council, National Onion Association, National Watermelon Council, Indian River Citrus League, the Grower-Shipper Vegetable Association, the Florida Tomato Exchange, the American Farm Bureau Association, the Teamsters Union, the Grown in the USA, Made in the USA Foundation, and the U.S. Business and Industrial Foundation.

Free Trade *continued from page 17*

According to Harvard Economist Dana Rodrik, "no widely accepted model attributes to postwar trade liberalization more than a very tiny fraction of the increased prosperity of the advanced industrial countries." Paul Bairoch, an eminent Swiss economist, is even more emphatic. "It is difficult to find another case where the facts so contradict a dominant theory than the one concerning the negative impact of protectionism."

The empirical evidence is weak. The promised benefits are trivial. A massive report issued by the World Bank and the OECD to encourage countries to create the new trade rules predicted that doing so would add about three-quarters of l percent to the estimated world GNP in 10 years: one-third of the normal annual growth percentage of a typical country.

Three years after enactment of the NAFTA, Mexico's trade with the U.S. went from a modest deficit to a $14 billion surplus. Yet the Mexico economy imploded, living standards plunged, unemployment soared and a wave of drugs and violence swept the country.

In the 10 years after Europe embraced its internal free trade treaty, unemployment doubled. Growth rates fell.

Two years ago, Asia plunged into a deep recession when foreign short term investment, which had flowed in when nations jettisoned their controls on capital, flowed out at the first signs of economic danger.

For many countries, economies grew fastest during the 1950s, 1960s and 1970s, when they operated in what we would call a highly protectionist fashion. Since adopting the new free trade rules, countries in Latin America and Africa have experienced economic stagnation or decline. In many countries, exports are up but living standards are down.

The free trade debate is no longer just about money: it's about the benefits of local culture and community and the rights of citizens. Let's hope that the battle in Seattle finds its way into this year's political campaigns, so that the "religion" of free trade can be examined more closely. [!]

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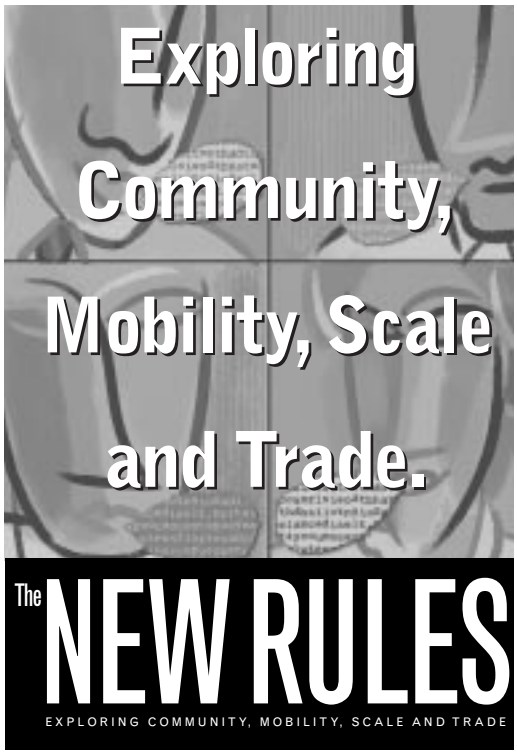

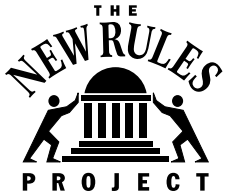

Designing rules as if community matters

The New Rules is a publication of The New Rules Project, which focuses on the rules needed to nurture strong communities. The project is a comprehensive effort to articulate a new vision of politics and economics for the twenty-first century. The New Rules Project is sponsored by the Institute for Local Self-Reliance, a 24-year-old nonprofit research and educational organization that provides technical assistance and information on environmentally sound economic development strategies. The New Rules Project is supported in part by grants from the Open Society Institute and the Albert A. List Foundation, Inc.

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